STATE OF MICHIGAN

COURT OF APPEALS

LISA JAMES,

Plaintiff-Appellant,

v

CHUCK E. CHEESE'S,

Defendant-Appellee.

UNPUBLISHED
April 11, 2006

No. 265693
Wayne Circuit Court
LC No. 03-338747-NO

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

The parties agree that plaintiff was a business invitee at defendant's restaurant. At some time after 9:00 p.m., plaintiff noticed that her daughter's diaper needed to be changed. Plaintiff walked to the restroom, carrying her daughter prone in her arms and a diaper bag on her arm or over her shoulder. Plaintiff pushed the restroom door open with her shoulder or back. Directly in front of the door was a wall requiring her to turn right. Plaintiff entered, and as she took a second step, she slipped. She fell forward on both knees and dropped her daughter. After the fall, plaintiff saw "multiple areas" of "wetness" in the area. She could see "a little dryness and certain wetness, some was dry and some was wet." Spots on the floor were about a foot in diameter. Plaintiff noted that the area by the door and the wall was dim; there was no light on that side of the wall. Plaintiff acknowledged that the manner in which she carried her daughter obstructed her view of the floor.

Plaintiff presented an affidavit from her sister, Betty James, who entered and observed the floor's condition shortly before plaintiff's fall and who was also in the restroom at the time of the incident. James averred that the floor was wet, but there were no visible warning signs, that she "could not observe" that the floor was wet when she entered because the lighting was dim, and the water was clear and could not readily be seen as she entered. She further averred that the wet floor caused her to slip, but she regained her balance.

The trial court held that the condition was open and obvious and granted defendant's motion for summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Lockridge v State Farm Mut Automobile Ins Co*, 240 Mich App 507, 511; 618 NW2d 49 (2000). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

Invitors are not absolute insurers of the safety of their invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id*. at 517. Whether a hazardous condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). The determination depends on the characteristics of a reasonably prudent person, not on the characteristics of a particular plaintiff. See *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004).

Plaintiff concedes that her particular situation (view of the floor obstructed by the child she was carrying) is not a basis for determining that the condition was not open and obvious. However, she contends that she was not relying on that circumstance. She contends that James's affidavit shows that there is a question of fact concerning whether a reasonably prudent person would have discovered the danger and risk upon casual inspection. We agree.

Defendant focuses on plaintiff's testimony that she was able to see areas of wetness after she stood up. Defendant states that plaintiff "concurs that the only reason she did not observe those same patches of water prior to her fall was because she elected to enter the restroom in such a fashion that it was physically impossible for her to see the floor." According to defendant, James's observations are not relevant in light of plaintiff's own testimony.

However, defendant's argument is premised on a mischaracterization of plaintiff's testimony. Plaintiff agreed that she was not able to observe the areas of wetness when she walked into the bathroom because she was holding her daughter and did not look at the floor. But plaintiff did not testify that the obstruction in her view was the *only* reason she did not observe the wetness, as indicated by defendant. Nor did plaintiff testify that she would have readily observed the wetness before her fall except for her failure to look.

When the evidence, including James's affidavit, is viewed in the light most favorable to plaintiff, reasonable minds could differ regarding whether the condition was open and obvious. The location of the wetness just inside the doorway, in an area that plaintiff and her sister indicated was dimly lit, is particularly compelling. "Casual observation" by a reasonably prudent person opening a door to enter a room where one has no reason to expect a wet floor does not entail close inspection of the floor before crossing the threshold. The fact that plaintiff and her sister were able to discover the wetness after their attention was drawn to it by slipping does not establish that it was visible upon "casual inspection."

In light of our conclusion that there is a genuine issue of fact whether the condition was open and obvious, we need not address plaintiff's contention that the unavoidable nature of the condition because of its location at the only entrance to the restroom constituted a special aspect that made the condition unreasonably dangerous. *Lugo, supra* at 518-519.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra